

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2642 of 1999

to

FIRST APPEAL No 2644 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

KARSHAN BIJAL S/O BHARWAD      BIJAL SAMAT

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Appearance:

MR SJ DAVE, Ld. AGP for Petitioners

MR KL DAVE for Respondent No. 1

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CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE D.P.BUCH

Date of decision: 26/06/2000

ORAL JUDGEMENT

(Per: M.H.Kadri,J.)

The appellants by filing these appeals under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') read with Section 96 of the Code of Civil Procedure, 1908, have challenged common judgment and award dated December 4, 1998, passed by the learned Extra Assistant Judge, Junagadh, in Land Reference Case No.2/89, 3/89 and 4/89. As common question of facts and law are involved in these appeals, we propose to dispose them by this common judgment.

2. The Executive Engineer, Una Irrigation Department, proposed to the State Government to acquire lands of village Kodiya, Taluka Una, Dist.Junagadh, for the public purpose of 'Machhunderi Irrigation Scheme'. The said proposal was scrutinised by the State Government. A preliminary notification under Section 4(1) of the Act was issued, which was published in the official gazette on September 22, 1983. After following the usual procedure under the Act, a declaration was made under Sec.6 of the Act, which was published on February 2, 1984. The Land Acquisition Officer after service of notices to the land owners under section 9 of the Act, made his award on April 9, 1984, on the basis of material produced before him and offered compensation of the acquired jirayat land of village Kodiya at the rate of Rs.65/- per Are and Rs.1/- per Are for waste land. The respondents-claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. They filed applications under Sec.18 of the Act, requiring the Land Acquisition Officer to refer their applications for determination of market value of the lands in question to the District Court, Junagadh. Accordingly, the said applications were forwarded to the District Court where it came to be numbered as Land Ref.Cases No.2/89, 3/89 and 4/89.

3. Before the Reference court, the claimants claimed compensation of their acquired lands of village Kodiya at the rate of Rs.15,000/- per Vigha i.e. Rs.1000/- per Are. To substantiate their claim of enhanced compensation, the claimants examined (1) Karsanbhai Bijalbhai at Exh.16, (2) Bhupatlal Jamnadas Chaniara at Exh.27, and produced certified copy of the deposition of Laxmanbhai Hajibhai Barad recorded in Land Ref.Case No.4/89 at Exh.15. The claimants produced documentary evidence such as abstract of village Form No.7/12. The appellants did not lead oral or documentary evidence.

4. The Reference Court, on the appreciation of the evidence led by the claimants deduced that the village form No.7/12 indicated that the claimants were raising crops of groundnut, wheat, bajri, vegetables and were getting income of Rs.66,000/per hectare. The price Per Are would be Rs.660/-. The Reference Court further deduced the market value of the acquired irrigated lands of Rs.660/- per Are whereas deducting 25% from the price of irrigated land, the market value of the non-irrigated land would be Rs.495/- Per Are. The Reference Court further deduced that previous award rendered in Land Reference Case No.205/91 which was produced at Exh.13 indicated that the reference court had determined market value of the acquired lands of village Kodiya as on February 6, 1978, at the rate of Rs.660/- per Are for irrigated lands and Rs.495/- per Are for non-irrigated lands. The Reference Court further deduced that the present lands were acquired by notification under Section 4(1) of the Act on September 7, 1983. The Reference Court, because of the gap of five years between the notification of Land Ref. Case No.205/91 and the notification under the present acquired lands gave rise of Rs.330/- and determined the market value of the present acquired lands at the rate of Rs.990/- for irrigated land and Rs.744/- for non-irrigated land. The Reference Court treated waste land as non-irrigated land and awarded compensation of the waste land at the rate of Rs.744/- with all the statutory benefits under the Act which has given rise to filing of the above numbered appeals by the appellants.

5. Learned Counsel for the appellants has taken us through the entire record and proceedings of the reference court. Learned Counsel for the appellants Mr.S.J.Dave, submitted that the determination of market value of the acquired lands was highly excessive. Counsel for the appellants further submitted that the reference court had erred in giving rise of Rs.330/- to the market value determined in previous award Exh.13, rendered in Land Reference Case No.205/91, by taking gap of five years between the two notifications. Counsel for the appellants further submitted that the reference court had not properly appreciated the evidence and has awarded excessive amount, and therefore, these appeals deserves to be allowed.

6. Counsel for the respondent submitted that the reference court has not committed any error in placing the reliance of previous award Exh.13, rendered in Land Ref.Case No.205/91, which was in respect of acquired

lands of village Kodiya. Counsel for the respondent submitted that, in the revenue record i.e. certified copy of Form No.7/12 abstract, the waste land was shown as Jirayat land and, therefore, the reference court was justified in awarding uniform rate of compensation which was treated as waste land by the Land Acquisition Officer by treating them as jirayat land. Counsel for the respondent submitted that a just, adequate and reasonable compensation is awarded by the reference court, and therefore, the appeals be dismissed with costs.

7. It is settled legal principle that when other evidence in the nature of sale deed, opinion of experts and previous award is available, the court should not take resort to yield method for the ascertainment of the market value of the lands under acquisition. Normally, the method of capitalising the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. It can be resorted to only when no other method is available. (See AIR 1984 S.C. p.774 Special Land Acquisition Officer, Davangree Vs. P.Veerabhadarappa). Therefore, when the evidence of previous award was available, the reference court ought not to have taken a resort to yield method to ascertain the market value of the present acquired lands.

8. The previous award rendered in Land Ref. Case No.205/91 wherein the market value of the acquired lands of village Kodiya as on February 6, 1978, was determined at the rate of Rs.660/Per Are for irrigated land and Rs.495/- Per Are for non-irrigated land was confirmed by this Court in First Appeal No.1320/99 decided on July 27, 1999. The date of notification under Sec.4(1) of the Act by which the acquired lands of previous award Exh.13 were acquired, was issued on February 6, 1978, whereas in the present appeals, the lands in question came to be acquired by the notification dated September 23, 1983. Therefore there was a gap of nearly 4 1/2 years between the two notifications. The Reference Court had given rise of five years by applying rise of 10% every year which is, in our opinion, is on higher side. In Award Exh.13, rendered in Land Ref. Case No.205/91, market price of the acquired lands was determined on the basis of yield method. Whereas, on the basis of sale deed of adjoining village Itava 1 1/2 k.m. away of village Kodiya there was no evidence before the reference court to award uniform rate of 10% every year. However, giving rise of 30% to the market value determined in previous award Exh.13 rendered in Land Ref. Case No.205/91 because

of gap of 4 1/2 years between two notifications. A rise of 25% is given to the determination of market value of non-irrigated lands which was determined at the rate of Rs.495/Per Are as on February 6, 1978. The market value of the non-irrigated land of the present acquired lands as on September 7, 1983, would be Rs.611/- Per Are. With regard to waste land, the Land Acquisition Officer has treated as kharaba land and awarded Rs.1/- Per Are in the award made under Section 11 of the Act. However, learned advocate for the respondent has vehemently submitted that, the revenue record in the nature of 7/12 abstract indicate that said land was shown as Jirayat land and, therefore, the reference court was justified in awarding uniform rate of compensation treating padter land as jirayat land. It is true that in the 7/12 abstract, the land was shown as jirayat land, but it transpires that about hector 1-15 Are was not used for cultivation. Therefore, we deduct 50% from the compensation determined of jirayat land to arrive at the market value of the compensation for the fellow land ad-measuring 81 Are which had acquired alongwith the jirayat land. If deduction of 50% is made from the determination of the market value of the jirayat land, the market value of the fellow land would be Rs.305/- Per Are.

9. In view of the aforesaid reasonings, we are of the opinion that determination of market value by the reference court is on higher side. We, therefore, determine the market value of the acquired lands situated at Village Kodiya as on September 23, 1983, at the rate of Rs.611/- per Are for jirayat land and Rs.305/- Per Are for inferior quality of jirayat land. The award of the reference court be modified accordingly. The statutory benefits extended in favour of the respondents-claimants under Sec.23(1)(A), 23(2) and interest under Sec.28 are eminently just and proper and hereby confirmed. It is clarified that the respondents-claimants shall not be entitled to solatium on the amounts under Sec.23(1)(A) and no interest shall be payable on the amounts of solatium as per the decision of the Apex Court in JT 1995(2) S.C. p.583 the State of Maharastra vs. Maharao Shrawan Hatker. The appeals filed by the appellants are partly allowed. The office is directed to draw the decree in terms of this judgment.

10. Learned counsel for the respondents has made a grievance that the amount of additional compensation awarded by the reference court is still not deposited by the appellants and therefore direction be issued to the appellants to deposit the additional amount of compensation within short period. The grievance made by

the learned counsel for the respondent is justified because the claimants had lost their agricultural lands which was only source of their livelihood and still they have not been paid the additional amount of compensation. We, therefore, direct that the appellants shall deposit the amount awarded under this judgment within a period of six months from today.

(M.H. Kadri, J.)

(D.P. Buch, J.)

syed/